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JUL 28 2004

OFFICE OF PETITIONS

In re Application of :
Adrian Kiermasz, et al. :
Application No. 10/812,824 : **DECISION GRANTING PETITION**
Filed: March 30, 2004 :
Attorney Docket No. 7103/409 (P1249) :

This is a decision on the communication filed July 9, 2004 requesting that the above-identified application be accorded a filing date of March 30, 2004, instead of the presently accorded date of March 29, 2004. The communication is properly being treated as a petition under 37 CFR 1.10(d).

Petitioners request the later filing date on the basis that the application was purportedly deposited in Express Mail service with the U. S. Postal Service, on March 30, 2004. In support, petitioners provided, inter alia, a copy of the Express Mail label, receipt No. EV425068526, as well as a copy of a copy of a US Postal Service (USPS) record styled "Pickup Service Statement for Express Mail, Global Express Guaranteed, Priority Mail, or Parcel Post" showing that a package bearing Express Mail label No. EV425068526US was picked up by the USPS from counsel's office on "3-30-04". It is noted that the transmittal letter found in the file includes the same Express Mail receipt number, as well as a statement of express mailing under 37 CFR 1.10 dated March 30, 2004. A review of the USPS Track/Confirm system indicates that the Express Mail package in question was enroute March 30, 2004 at 5:55 pm. (see copy attached)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by

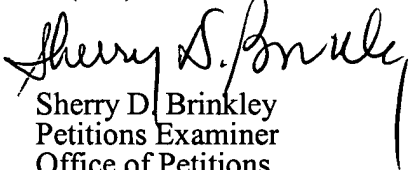
evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in ' 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS."

Petitioners' evidence shows that the package in question was accepted on March 30, 2004, not March 29, 2004. As the USPS Pickup Service Statement and, more importantly, the Track/Confirm record corroborates a "date-in" of March 30, 2004, the petition is GRANTED. Under the circumstances, no petition fee is required.

The application is being returned to Initial Patent Examination Division (OIPE) for further processing and correction of the filing date to **March 30, 2004**.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: USPS Track Confirm record